ISSN 1195-0226

HIGHLIGHTS

Ontario Labour Relations Board

Editors: Voy Stelmaszynski, Solicitor
Leonard Marvy, Solicitor

January 2006

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in December of this year. These decisions will appear in the November/December issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Employment Standards – In this employer application for review the employer acknowledged that it had no written agreement to bank overtime – Although it acknowledged that it owed Pitt overtime pay, it deducted an amount owing since it believed Pitt's time cards were punched by someone else when he was on WSIB benefits – The Board found that Mr. Pitt was not at work, and that his time cards were punched for him so he would be paid – However the Board found that s. 13 of the Act precludes the employer from deducting the amount owing to the worker, since none of the exceptions was present – The Board noted that by making deductions from the wages owing, the employer was able to use its economic power to impose its version of events on the employee, putting the employer in the position of judge and jury with respect to Pitt's conduct, which is prohibited by the Act – Order to Pay confirmed

ASHCROFT HOMES-CENTRAL PARK INC.; RE KELVORT PITT AND DIRECTOR OF EMPLOYMENT STANDARDS; File No. 3860-04-ES: Dated December 9, 2005; Panel: Brian McLean (6 pages)

Practice and Procedure – *Personal Information Protection and Electronic Documents Act* – Unfair Labour Practice – The union was seeking home addresses and telephone numbers of employees in the bargaining unit and the employer resisted, relying upon PIPEDA and an article in the collective agreement, which gave the employees an entitlement to elect whether to indicate their home addresses and telephone numbers on union membership applications – The Board found that PIPEDA did not apply to "employee information" in the provincial sector (and if wrong on this point, that two provisions of PIPEDA would not preclude disclosure) – The Board also found that the union could not carry out its responsibilities to bargain without access to the employee information and the article only described an entitlement that operates during the normal course of the collective agreement, and when bargaining a renewal collective agreement, the union has certain rights under the Act (see Millcroft Inn) – In the circumstances, the Board found that the employer's refusal to provide the information sought was a violation of s. 70 of the Act and directed the employer to provide the names, home addresses and telephone numbers – Application granted.

CANADIAN NIAGARA HOTELS INC.; RE UNITE HERE, LOCAL 75; File No. 2004-05-U; Dated December 23, 2005; Panel: Christopher J. Albertyn (6 pages)

Parties – Related Employer – Remedies – Unfair Labour Practice – During the hearing of an unfair labour practice complaint against CDN, it entered into an asset purchase agreement with Premier – The applicant union brought a related employer application and asked that Premier and the President of CDN be added as parties to the related employer application – Section 69 of the Act was not applicable and there were no ULP complaints alleged against Premier – In these

circumstances, the Board added the President as a party and found, among other matters, that it had no jurisdiction to make Premier (an innocent purchaser) a party to the original ULP, and even if it did have such discretion, it would not exercise it since there existed balanced policy reasons on either side of this issue and the legislature had chosen not to act – Order accordingly – Related employer application dismissed – matter continues

CDN AUTO RELEASING LTD.; AND PREMIER MANUFACTURING SUPPORT SERVICES OF CANADA CORP.; RE THE INTERNATIONAL UNION, UAW-CLC; File Nos. 3610-04-U; 1516-05-R; Dated December 1, 2005; Panel: Timothy W. Sargeant (10 pages)

Conciliation – Termination – Timeliness – This application for termination of bargaining rights was filed subsequent to the appointment of a conciliation officer where the notice to bargain was not given by the union within the last 90 days before the collective agreement ceased to operate – The union took the position that the application was untimely pursuant to s. 67(2), whereas the employer argued the appointment of the conciliation officer by the Minister was improper since notice was not given within the last 90 days of the collective agreement as required by s. 59 – The Board found the Minister's appointment of the conciliation officer was the only precondition necessary for the application of subsection 67(2) – The Board further comments that any other interpretation would require the Board to "look behind" the Minister's appointment, which the Board has consistently refrained from doing – Accordingly the application was untimely – Application dismissed

EVANS LUMBER AND BUILDERS SUPPLY LIMITED; RE MARCEL GIROUX; RE WAREHOUSEMEN, TRANSPORTATION AND GENERAL WORKERS UNION OR ITS LOCAL 715; File No. 2882-05-R; Dated December 7, 2005; Panel: Ian Anderson, R. O'Connor, L. Wood (5 pages)

Interim Relief – Practice and Procedure – Trade Union – Unfair Labour Practice – The Local union sought interim relief to remove the supervision of the International pending the litigation of the main application, where the Local complained that the International altered the jurisdiction of, or interfered with, the Local without just cause, contrary to sections 147 and 149 – The Board confirmed it has the jurisdiction pursuant to s. 98(1)(a) to provide relief necessary to ensure the integrity of its processes, including the ability to make orders and directions designed to render meaningful, those protections afforded to local unions in sections 147 and 149 – The Board considered the usual factors and found that the granting of the interim relief requested by the Local (to suspend the supervision of the Local by the International) was appropriate in these circumstances, conditional upon an undertaking by the Local executive members that they will pay any damages the Board may determine are appropriate should the main application fail – Finally the Board decided that the main application would be heard by consultation pursuant to Rule 41, rather than hearing – Application for interim relief conditionally granted – Main application continues

GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL & ALLIED WORKERS; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; File Nos. 2069-05-U; 3055-05-M; Dated December 21, 2005; Panel: Kevin Whitaker (6 pages)

Health and Safety – The Board will consider the request to suspend an order pending the disposition of an appeal, notwithstanding that the parties may have engaged in mediation prior to the request – The Board found that this circumstance may affect the exercise of its discretion when considering the request to suspend, but not its jurisdiction to hear the request – Application proceeds

KELLY SERVICES (CANADA) LTD.; RE DWAIN SPICER, INSPECTOR; File Nos. 1775-05-HS; 3082-05-HS; Dated December 13, 2005; Panel: Caroline Rowan (1 page)

Health and Safety – Suspension – The employer brought an application to suspend an Inspector's order requiring the employer to ensure that, when workers are working from delivery truck platforms at heights greater than 24" from the ground, measures be taken to prevent workers from accidentally falling from the platforms – The Board found that Pepsi had a strong *prima facie* case on appeal (no reasonable

way for a guardrail or fall arrest system to be used on the delivery trucks); it was prejudiced (Order appeared impossible to carry out, except for installing and reinstalling a fall arrest system at every stop); and finally the Board was not persuaded that there was any significant risk to employees that ought to prevent it from suspending the Order – Order suspended

PEPSI BOTTLING GROUP (CANADA) CO.; RE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AND LOU PARCO, INSPECTOR; File No. 2799-05-HS; Dated December 22, 2005; Panel: David A. McKee (7 pages)

Court Proceedings

Bargaining unit – Judicial Review – Reconsideration – The applicant requested that the Board use its reconsideration powers to rationalize 11 bargaining units containing 146 unionized employees – The Board noted that it has consistently held that once the first collective agreement has been negotiated, the Board's certificate is spent, and thereafter the scope of the bargaining unit is determined by reference to how the parties have defined or redefined it – The Board has left to the parties the responsibility to negotiate changes to their bargaining units and to establish bargaining structures that suit them – Finally, interfering in negotiated bargaining structures would create uncertainty in the labour relations community and the Board should resist creating such uncertainty – Application dismissed – On judicial review the court found that the appropriate standard of review was patent unreasonableness, that the Board's decision was a rational one, based on policy factors and that the conclusion arrived at had a rational connection to the reasons offered in support – The Court was satisfied the decision was not patently unreasonable and dismissed the application – Dismissed

BA INTERNATIONAL INC.; ONTARIO (LABOUR RELATIONS BOARD), INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 588, OTTAWA STEEL PLATE FEEDERS & EXAMINERS, LOCAL 31, INTERNATIONAL PLATE PRINTERS, DIE STAMPERS AND ENGRAVERS UNION OF NORTH AMERICA, LOCAL 6, INTERNATIONAL ASSOCIATION OF MACHINITS AND AEROSPACE WORKERS, AMALGAMATED TRANSIT UNION, LOCAL 279 AND GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 41-M; File No. 1363-04-U (Court File No. 05DV001103); Dated December 6, 2005; Panel: Platana, McLean, Heeney JJ. (6 pages)

******

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Kostantinos Ioannidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	Pending
United Brotherhood of Carpenters v. United Brotherhood of Carpenters, Local 93 Divisional Court No. 01/06	2069-05-U; 3055-05-M	Pending
Rhijnsburger, Cory v. Rogers Video Court File No. SC 05-029515-00 (Civil Suit)	0051-02-ES	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 77287/05 WHITBY	3704-04-U	Pending
Leonard Gott v. Director of Employment Standards, et al Divisional Court No. SC-05-24523-00 (Civil Suit)	0444-02-ES; 1537-03-ES	Adjourned – Feb. 28/06
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending
BA International v. UA Local 412 et la Divisional Court No. 05-DV-001103	1363-04-U	Dismissed Dec. 6/05
1333833 Ontario Inc. v. OLRB, Employment Standards Officer, Norstead Building Products Inc. Divisional Court No. DV-05-236	3559-04-ES	Pending
Wellington De Oliveira v. L.U.I.N.A 183 Divisional Court No. 51/05	0430-04-R	Pending
Benjamin Blasdell v. UFCW Local A.F.L.-C.I.O.-C.L.C. Local 1000A; Loblaws Supermarkets Ltd. Divisional Court No. 74010/04 NEWMARKET	1431-03-M; 1341-03-U	Pending - Dec. 12/05
Assurant Group v. Ignacia Menor Fillion, et al Divisional Court No. 528/04	2999-03-ES	Pending – Jan. 16-17/06
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U; 3552-00-U	Pending - Jan. 27, 2006
Association of Professional Ambulance Employees v. City of Toronto, Toronto Emergency Medical Services et al Divisional Court No. 44/04	2456-01-R	Pending
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Heard – Feb. 23,24,25,28/05 - Reserved